



# महाराष्ट्र शासन राजपत्र

## असाधारण भाग चार-क

वर्ष ६, अंक ४२]

मंगळवार, ऑगस्ट १२, २०१४/श्रावण २१, शके १९३६

[पृष्ठे ३, किंमत : रुपये ९.००

असाधारण क्रमांक ७७

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क),  
जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील  
इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

### BEFORE THE GOVERNOR OF MAHARASHTRA

*In Re* : Petition under article 192(1) of the Constitution of India by Shri Praful Vithal Loke, regarding alleged disqualification of Shri Dilip Dattatray Walse-Patil, Member of Maharashtra Legislative Assembly under article 191(1) of the Constitution of India.

### Order

No. RB/ADM/2014/1577.—This is a petition under article 192(1) of the Constitution of India filed by Shri Praful Vithal Loke, seeking a declaration that Shri Dilip Dattatray Walse-Patil, M.L.A., has become subject to disqualification under article 191(1)(a) of the Constitution of India, for holding the office of the Speaker, Maharashtra Legislative Assembly, as it is an office of profit under the Government.

The averment in the petition is that, the abovementioned MLA is holding office of the Speaker of the Assembly. It is also alleged that, the remuneration of the Speaker of the Legislative Assembly is more than that of an M.L.A. and that the source of the remuneration is out of the Government revenue. It is also alleged that in view of the provisions of article 164(2) of the Constitution, the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State and as such the Government is collectively responsible to the Speaker of the Legislative Assembly. It is also-alleged that, in accordance with clause (3) of article 187 of the Constitution of India, the Speaker of the Legislative Assembly performs the functions of the Government. It is also alleged that the office of the Speaker of the Legislative Assembly is an office of profit under the Government within the meaning of article 191(1) (a) of the Constitution. The petitioner has submitted that, in

the case of *Satrucharla Chandrasekhar Raju vs. Vyricherla Pradeep Kumar Dev* (AIR 1992 SC 1959), the Supreme Court of India, in paragraph 20 of the judgment held that the right to appoint and right to remove the holder of office in many (not in all) cases becomes an important and decisive test. The petitioner has also submitted that, in the said case the Supreme Court has held that the control exercised by the Government may be one of the tests but that by itself is not a decisive test.

As required by provisions of clause (2) of article 192 of the Constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion. The Election Commission of India has submitted its opinion in the matter.

The Commission pointed out that the question of Shri Dilip Dattatray Walse-Patil along with five other MLAs/MLCs, on the same ground was raised by the same petitioner in 2012 by filing a petition before the Governor of Maharashtra and that in the said petition, the Commission has opined that, the office of the Speaker held by Shri Dilip Dattatray Walse-Patil is not an office of profit under the Government, as he is not appointed by the Government nor can he be removed or dismissed from that office by the Government, but is elected by the Members of the Legislative Assembly and, therefore, he is not holding an office under the Government and hence not disqualified on the ground mentioned in the said petition. The Commission has referred its opinion dated the 26th February 2013 in Reference Case No. 5 (G) of 2012, for the purpose.

The Commission has observed that, the petitioner has not mentioned anything about his previous petition and the Commission's opinion thereon, but attempted to make a case that the opposite party has earned disqualification on the grounds mentioned in para 4 above.

The Commission has observed that, the submissions made by the petitioner in this petition are not new. The Commission has opined that a disqualification under article 191(1)(a) is attracted not by the mere by holding of an office or an office of profit but on holding of office of profit under the Government of India or any State. The Commission has pointed out that the test for determining the question whether a particular office is an office under the Government or not, were more succinctly elucidated by the Supreme Court in the case of *Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanappa* (1971) 3 SCC (870) and in *Satrucharla Chandrashekhar Raju Vs. Vyricherla Pradeep Kumar Dev* (AIR 1992 SC 1959). The Commission has pointed out that applying the tests laid down in the aforesaid cases, the Supreme Court in the case of *Bhagwati Prasad Dixit Ghorewala Vs. Rajiv Gandhi* (AIR 1986 SC 5135) has held that the Members of Parliament and State Legislatures are not holding office of profit under the Government as they are not appointed as such members by the Government but elected by the people. The Commission has pointed out that, as per the provisions of article 178 of the Constitution, Speaker of the Legislative Assembly is chosen by the Members of the Legislative Assembly from among the Members of the Assembly, who in turn, are elected by the voters of the State. The Commission has also pointed out that article 179 provides that the Speaker shall vacate his office if he ceases to be a Member of the Assembly or, by resignation from the office or by a resolution passed by the Assembly as provided in clause (1) of article 179. The Commission has, therefore, opined that it is clear that the Executive Government has no role in choosing the Speaker or in the removal of the Speaker from the office. The Commission is of the view that, applying the ratio of the judgments of the Supreme Court in the case of *Shivamurthy Swami Inamdar Vs. Agadi Sanganna Anandappa* and *Bhagwati Prasad Dixit Ghorewarla Vs. Rajiv Gandhi*, the office of Speaker is not an office under the Central Government or the State Government and hence does not come within the ambit of the "office of profit" under article 191(1) (a).

The Commission is, therefore, of the considered opinion that the office held by Shri Dilip Dattatray Walse-Patil, M.L.A., is not an office of profit under the Government, and he is not disqualified on the ground mentioned in the petition. The Commission has also pointed out that, no new facts have been adduced in this petition for reconsideration of the opinion already tendered by the Commission in Reference Case No. 5(G) of 2012 on the 26th February 2013-Shri Praful Vithal Loke Vs. Shri Dilip Dattatray Walse-Patil and 5 others.

In view of the above, the Election Commission has returned the reference received under article 192(2) of the Constitution of India with the opinion to the effect that Shri Dilip Dattatray Walse-Patil, is not disqualified on the grounds urged in the petition.

In accordance with the said opinion, I pass the following order :—

**Order**

The petition of Shri Praful Vithal Loke is hereby, for the reasons stated above, dismissed.

Mumbai,  
Dated the 6th August 2014.

K. SANKARNARAYANAN,  
Governor of Maharashtra.

क्रमांक डीआयएस-२०१४/प्र.क्र. ११२६/१४/३३.

**सामान्य प्रशासन विभाग**

मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,  
मंत्रालय विस्तार, मुंबई ४०० ०३२.

दिनांक १२ ऑगस्ट २०१४.

प्रत, माहितीसाठी व उचित कार्यवाहीसाठी अग्रेषित :—

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधान भवन, मुंबई.
- (२) विभागीय आयुक्त, पुणे विभाग.
- (३) जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी, पुणे.
- (४) निवडनस्ती.

**अ. ना. वळवी,**

अवर सचिव व उप मुख्य निवडणूक अधिकारी,  
महाराष्ट्र राज्य.